

## § 405.906

right to judicial review only as provided under section 1879(d) of the Act; that is, when a determination involves a finding that services are not covered because—

(1) They were custodial care (see § 411.15(g) of this chapter); they were not reasonable and necessary (see § 411.15(k) of this chapter); they did not qualify as covered home health services because the beneficiary was not confined to the home or did not need skilled nursing care on an intermittent basis (see § 409.42(a) and (c)(1) of this chapter); or they were hospice services provided to a non-terminally ill individual (see § 418.22 of this chapter); and

(2) Either the provider or the beneficiary, or both, knew or could reasonably be expected to know that those services were not covered under Medicare.

### **§ 405.906 Parties to the initial determinations, redeterminations, reconsiderations, hearings and reviews.**

(a) *Parties to the initial determination.* The parties to the initial determination are the following individuals and entities:

(1) A beneficiary who files a claim for payment under Medicare Part A or Part B or has had a claim for payment filed on his or her behalf, or in the case of a deceased beneficiary, when there is no estate, any person obligated to make or entitled to receive payment in accordance with part 424, subpart E of this chapter. Payment by a third party payer does not entitle that entity to party status.

(2) A supplier who has accepted assignment for items or services furnished to a beneficiary that are at issue in the claim.

(3) A provider of services who files a claim for items or services furnished to a beneficiary.

(b) *Parties to the redetermination, reconsideration, hearing and MAC.* The parties to the redetermination, reconsideration, hearing, and MAC review are—

(1) The parties to the initial determination in accordance with paragraph (a) of this section, except under paragraph (a)(1) of this section where a beneficiary has assigned appeal rights under § 405.912;

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(2) A State agency in accordance with § 405.908;

(3) A provider or supplier that has accepted an assignment of appeal rights from the beneficiary according to § 405.912;

(4) A non-participating physician not billing on an assigned basis who, in accordance with section 1842(1) of the Act, may be liable to refund monies collected for services furnished to the beneficiary because those services were denied on the basis of section 1862(a)(1) of the Act; and

(5) A non-participating supplier not billing on an assigned basis who, in accordance with sections 1834(a)(18) and 1834(j)(4) of the Act, may be liable to refund monies collected for items furnished to the beneficiary.

(c) *Appeals by providers and suppliers when there is no other party available.* If a provider or supplier is not already a party to the proceeding in accordance with paragraphs (a) and (b) of this section, a provider of services or supplier may appeal an initial determination relating to services it rendered to a beneficiary who subsequently dies if there is no other party available to appeal the determination.

### **§ 405.908 Medicaid State agencies.**

When a beneficiary is enrolled to receive benefits under both Medicare and Medicaid, the Medicaid State agency may file a request for an appeal with respect to a claim for items or services furnished to a dually eligible beneficiary only for services for which the Medicaid State agency has made payment, or for which it may be liable. A Medicaid State agency is considered a party only when it files a timely redetermination request with respect to a claim for items or services furnished to a beneficiary in accordance with 42 CFR parts 940 through 958. If a State agency files a request for redetermination, it may retain party status at the QIC, ALJ, MAC, and judicial review levels.